

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Rae Ann
Anderson to Provide Family Child Care

**FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM**

A hearing in this matter was held on Friday, October 11, 2002, in Minneapolis before Administrative Law Judge Allan W. Klein.

Appearing on behalf of the Department of Human Services was Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415.

Rae Ann Anderson, 7539 Brunswick Avenue North, Brooklyn Park, MN 55443, appeared on her own behalf, without benefit of counsel.

The hearing ended in less than a day, and the hearing record closed at the end of the hearing.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 days from receipt of this Administrative Law Judge's Report to file exceptions to it with the Commissioner.^[1] However, the law also requires the Commissioner to issue a final order within 10 working days from receipt of this Administrative Law Judge's Report.^[2] Because of the short timelines, the parties are urged to file any exceptions as soon as possible.

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STATEMENT OF ISSUE

Is there reasonable cause to believe that, if this temporary suspension is lifted, the health, safety or rights of children in Anderson's care will be at imminent risk of harm because Anderson allowed a convicted sex offender to be present in the house when the day care children were also present?

The Administrative Law Judge concludes that the Department did have reasonable cause to order a temporary immediate suspension of the license when this matter first came to light, but the subsequent arrest and likely long-term incarceration of the sex offender has removed the risk of harm to the children, and the Department has not demonstrated any other ongoing risk to justify continuing the suspension.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Rae Ann Anderson has been providing daycare for approximately 22 years. She has had only one licensing issue (relating to a dirty carpet) in those 22 years. In early August of 2002, immediately prior to her suspension, she was taking care of seven different children, although at least one was only part-time. The daycare was provided in a portion of her home, located in Brooklyn Park. The licensed portion did not include the basement or garage.

2. For roughly 15 years, Anderson has had a friend named Wendee Olson. Olson has two sons, both of whom are now adults, but when they were younger, one of Olson's sons was involved in a hockey team with one of Anderson's sons.

3. Sometime in the year 2000, Olson met a man, Ivan Hazelwood, and they began to date. After a few weeks, Hazelwood told Olson that he had been convicted of a sex crime back in 1995. He was accused of fondling a 10 year old girl, and was charged with a number of criminal sexual conduct violations. Hazelwood told Olson that he was innocent, but that he ran out of money trying to fight the charges, and under the threat of a possible 12 year sentence if convicted, he chose to plead guilty to second degree criminal sexual conduct. Olson believed this explanation, and believed he was innocent. On February 10, 1995, he was sentenced to 21 months, but execution was stayed, and he was placed on probation for 25 years. Following a series of probation violations, on March 4, 1999, his stay of execution was revoked, and he was sent to jail for the roughly 10 months remaining of his 21 month original sentence.

4. In April 2001, Hazelwood was convicted of driving after cancellation and refusing an alcohol test, and was sent back to jail. He was released in February of 2002, and pursuant to an agreement with his probation officer, came to live with Wendee Olson.

5. Rae Ann Anderson first heard about Hazelwood from Olson sometime in the fall of 2000, and first met him in January of 2001. Olson told Anderson about Hazelwood's criminal sexual conduct conviction sometime around April of 2001, when Hazelwood was sent back to prison. But Olson also told Anderson that Hazelwood was innocent, and had been forced to plead guilty.

6. James Lane has lived near Anderson since 1999. In February of 2002, he and Anderson became intimate friends, and he spent a lot of time with her. Through Anderson, Lane came to know Wendy Olson and Ivan Hazelwood. Sometime in March

or April of 2002, Anderson told Lane about Hazelwood's prior criminal sexual conduct conviction.

7. At some point in the late spring or early summer of 2002, Lane and Anderson broke up, and Lane began seeing another neighbor, Teresa Gullekson. Gullekson lived three houses away from Anderson, and had three children, ages seven, five and three and one-half. Gullekson used Anderson as her daycare provider from August of 2000 forward, and by July of 2002, Gullekson's children were at Anderson's on a regular 6:00 a.m. to 4:15 p.m. schedule, Monday through Friday, unless they were at camp or otherwise occupied.

8. On August 12, 2002, Gullekson arrived at Anderson's home to pick up her son, Tanner, age 3 ½. Gullekson noticed that Tanner had a temporary tattoo on his shoulder, and asked how he got it. Tanner said he got it from "Mr. Bob." Gullekson then asked Anderson who "Mr. Bob" was. Another mother, who happened to be picking up her child at the same time, interjected that "Mr. Bob" must be "Jacob's dad." Anderson said something like "oh yes, he's a Bob too," never directly answering Gullekson's original question. The conversation moved on, and Gullekson took Tanner back to her house. Later that evening, however, a man walked by Gullekson's house, and the children shouted out "Hi, Mr. Bob." Jim Lane, who by then was living with Gullekson, recognized "Mr. Bob" as Wendee Olson's boyfriend, Ivan. Lane then told Gullekson what he knew about Ivan's prior criminal background, and that he thought Ivan and Wendee Olson were living at Anderson's. This upset Gullekson. Later that evening, Gullekson saw Anderson, Wendee Olson and Ivan together, and this confirmed to Gullekson that Ivan was Wendee's boyfriend. She remembered that Anderson had once told her that Wendee's boyfriend was in prison.

9. The next day, August 13, Gullekson telephoned the Brooklyn Park Police Department and inquired about whether there could be a convicted sex offender living at Anderson's home. After some time had passed (most likely two days, until August 15, 2002) Detective Harry Christianson from the Brooklyn Park Police Department called Gullekson and told her that it could be a man named Ivan Hazelwood, and that she could look at the Department of Corrections' public website in order to see a picture of him. Gullekson did view the website from her workplace, but could not be certain whether or not the person identified there as Ivan Hazelwood was, in fact, the "Mr. Bob" that she had seen at Anderson's. She printed out the picture, and other information provided by the website, and left her work in order to investigate the matter more fully. She went to the worksite of a Twani Boos, another mother who had children at Anderson's. Gullekson showed Boos the picture from the website, and Boos confirmed that "Mr. Bob" was, in fact, Ivan Hazelwood. They then went to speak with two other mothers with children at Anderson's, and one of them also confirmed the identification. That was enough for Gullekson. She and another mother immediately went to Anderson's home, and picked up their children. The scene at Anderson's house was confused and emotional, but as soon as Anderson discovered that Hazelwood's history was known by her customers, she ran down to the basement (where Hazelwood was working on a bathroom restoration project for her) and told Hazelwood to get out of the house and not come back.

10. When Gullekson got home she called Hennepin County, and ultimately spoke with someone in the child protection unit. The matter was referred to Mary Mingo, a Child Protection Investigator, who contacted the Brooklyn Park Police Department, and spoke with Detective Christianson. She learned that the previous day Christianson had spoken with Hazelwood's parole officer and the parole officer had issued a warrant for Hazelwood's arrest. Christianson and Mingo agreed to wait until Hazelwood had been picked up on the warrant before proceeding any further.

11. At roughly the same time that Mingo was speaking with Detective Christianson, Rae Ann Anderson had called the County licensors. Anderson reported that Gullekson had confronted her over Hazelwood's presence in her home, and that she wanted to know what was going on. She stated that Hazelwood was doing work on her home, repairing a downstairs bathroom. She reported that he had been doing this for two to three weeks, but that he and Wendee Olson had actually been staying in her house for the last week or so. Anderson said that she believed that Hazelwood had been in prison for driving and alcohol problems, but was not aware of any sex offense history. Anderson stated that she was visited by Brooklyn Park police on the 15th, who confirmed what Gullekson had told her about Hazelwood, and that the police instructed her to call them if she saw Hazelwood or had any contact from him. On August 15, Brooklyn Park police did attempt to arrest Hazelwood on the outstanding warrant both at Wendee Olson's home, as well as at Anderson's home. They did not find him at either one, but Anderson told them that he had been staying with her for the past week while working on her basement.

12. On Monday, August 19, Detective Christianson and child protection investigator Mingo made an unannounced visit to the Anderson home. There was only one child in care, and they had an opportunity to speak with Anderson at length. Anderson told them that Hazelwood was Wendee Olson's boyfriend, that he had volunteered to help her finish a remodeling job in the basement, that Hazelwood and Olson had been staying with her for about a week, that she knew Hazelwood had been in prison but thought it was for driving and alcohol problems, and that she knew nothing about a sex offense history until the previous week when confronted by Gullekson. She stated that Hazelwood worked in her basement mostly in the afternoon and evenings, and that he had very little contact with the children. She admitted that on one occasion, Hazelwood had taken a young boy into the bathroom and applied some temporary tattoos, but that the door had been open the whole time and the encounter was very brief. The only other times that Hazelwood would have contact with the children, she stated, was when he would come up from the basement to use the bathroom, get a beverage, or retrieve a tool. She insisted that she knew nothing about his sex offense history, and that as soon as Gullekson had confronted her with the information, she had told Hazelwood to get out and stay out.

13. Following the interview, the County Children and Family Services Department decided that Anderson's license should be immediately suspended, and prepared a recommendation to the State Department of Human Services. The County reasoned that Anderson had failed to appropriately notify it about the change in her household membership, and either ignored or failed to recognize the potential risk in

allowing Hazelwood into her home. The county described the relationship between Anderson and Wendee Olson, and expressed the concern that perhaps Anderson had known more about Hazelwood's criminal record than she was admitting. Finally, the County reported that Gullekson had told them that when she went to pick up her son on August 13, she saw Hazelwood in the home, and asked Anderson who he was. According to Gullekson's report, Anderson was evasive and did not give her any further information.

14. The Department determined not to immediately suspend Anderson's license, but rather to allow the investigation to continue to determine what else might be learned.

15. On August 21, Teresa Gullekson called the County and spoke with Lisa Yates, in the Daycare Licensing area. Gullekson told Yates that another neighbor (later identified as Jim Lane) had told Gullekson that Anderson had known that Hazelwood had a sexual offense record. Yates relayed this information to Mingo, and Mingo attempted to contact Gullekson. Several days went by, but finally on August 30, Mingo and Gullekson spoke by phone. Gullekson told Mingo that Anderson had told Lane, several months earlier, that Hazelwood was in jail for molesting a child. Mingo then contacted Jim Lane, and Lane confirmed Gullekson's story. He stated that one night, around April, 2002, he and Anderson had been watching television and Anderson told him that Hazelwood had been in jail because of sexual abuse of a minor child. Lane indicated that he had noticed Ivan Hazelwood around the Anderson's house for "a few weeks" and that it appeared to him that Hazelwood and Wendee Olson were living at Anderson's house. Mingo then spoke with other daycare parents and confirmed that Hazelwood had been around the house for some time, and that it appeared that Hazelwood and Wendee Olson were living there. One parent, in fact, reported that she had accidentally stumbled in on Hazelwood and Olson asleep in a bedroom. These conversations with parents occurred on the morning of September 3, and that afternoon, Mingo and her supervisors determined that Anderson had maltreated the children because she had endangered them.

16. On September 5, 2002, the County sent a revised request for a temporary immediately suspension and a revocation of Anderson's license. The County described the additional information it had learned concerning Anderson's prior knowledge of Hazelwood's sexual offense.^[3] On that same day, the Department issued an Order of Temporary Immediate Suspension, ordering Anderson to cease operations effective 12:01 a.m. on September 10.^[4] On September 12, Anderson appealed the Temporary Immediate Suspension.^[5] On September 12, a Notice of and Order for Hearing was issued by the Department, setting a hearing for October 11. The hearing did, in fact, go forward on that date.

17. On September 22, 2002, Hazelwood turned himself in to a county sheriff, and was placed in custody. He is presently being held in the Sherburne County jail for parole violations. One of the conditions of his prior release was that he have "no direct or indirect contact with female minors without prior documented approval..." At the time that Hazelwood was residing in the Anderson household, among the regular children in

care was Crystal, age five and Mia, age one and one-half. Earlier in July, when Hazelwood was around the house but not yet living there, there was a four year old girl named Sonja who was in care. It is not known, at this time, whether or how long Hazelwood will be reincarcerated. As of the day of the hearing, Wendee Olson thought it likely that he would be reincarcerated for some time, but did not know how long that might be.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. § 245A.07, subd. 2 and 3, and 14.50.

2. The Commissioner, through Hennepin County Children and Family Services, has complied with all substantive and procedural requirements.

3. At the time that the Commissioner issued the Order of Temporary Suspension, there was reasonable cause to believe that Anderson's actions or failure to comply with applicable law or rule did pose an imminent risk of harm to the health, safety, or rights of children in her care. At that time (September 9, 2002) Hazelwood was still at large. But since then, Hazelwood has been apprehended and is presently incarcerated. There is no way of knowing, at this time, whether or for how long Hazelwood will remain in custody.

4. The issue in this hearing is whether the temporary immediate suspension should remain in effect, pending the Commissioner's final Order under § 245A.08. The burden of proof is limited to the Commissioner's determination that reasonable cause exists to believe that Anderson's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety or rights of the children. The Administrative Law Judge concludes that there is no imminent risk of harm justifying a continued suspension.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the temporary immediate suspension of Rae Ann Anderson's family child care license be lifted.

Dated this 23rd day of October 2002.

/s/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

Recorded: Tape Recorded (two tapes)

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

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MEMORANDUM

There are two matters which the Administrative Law Judge believes need discussion. The first has to do with credibility of witnesses, while the second has to do with the appropriate standard to use in reviewing these temporary immediate suspensions.

An important aspect of this case is determining when Rae Ann Anderson first learned of Hazelwood's criminal sexual offense. If it was sometime in April or May, as alleged by Lane and Gullekson, then Anderson should never have let Hazelwood into the house, at least not while daycare operations were taking place. At the very least, she should have consulted with her licensing workers to determine if there would be any problem. This raises serious questions about her judgment. But, on the other hand, if it was not until mid-August, when Gullekson confronted her with the photo from the internet and other information identifying Hazelwood as a sex offender, then there is really no way to say that Anderson's conduct poses a risk of harm to children in the future. Lane was very clear in stating that Anderson told him about Hazelwood's sex offense months before Hazelwood began working on Anderson's remodeling project. Anderson, on the other hand, was adamant in stating that Lane's story is false, and that she knew nothing of Hazelwood's sexual background until mid August. Assessing the credibility of the witnesses is complicated by the fact that Lane initially had a romantic relationship with Anderson in the late winter and early spring, but then ended that and began a romantic relationship with Gullekson. The Administrative Law Judge is not convinced that any of the three (Anderson, Lane, or Gullekson) were totally truthful at the hearing.

The Administrative Law Judge has decided that it is more likely than not that Olson did tell Anderson about her boyfriend's past history, and that Anderson did, in fact, mention it to Lane while Anderson and Lane were still dating. The Administrative Law Judge reaches that conclusion based upon the fact that we do know that Gullekson's reaction to learning of Hazelwood's history was quick and firm. Once she confirmed that "Mr. Bob" was a convicted sex offender, she lost no time in getting her child out of the Anderson home, and alerting other daycare parents to do the same. It makes sense, therefore, that she only learned of Hazelwood's criminal sexual history immediately before she began taking action. The record only contains one explanation

of how she could have learned this. That explanation is that Lane told her. The next question, then, is how did Lane find out that “Ivan” had a criminal sexual history? The only method suggested in the record is that Anderson told him. Although Anderson and Olson both denied that Olson ever told Anderson that her boyfriend had such a history, neither of them suggested a way that Lane or Gullekson found out about Hazelwood other than the way that Lane and Gullekson have stated. Therefore, the Administrative Law Judge has determined that Lane probably was telling the truth when he stated that it was Anderson who told him about Hazelwood’s past, which means that Anderson knew about Hazelwood’s past well before he began to work in her home. Allowing him anywhere near children, without at least investigating the circumstances of his conviction or presenting the situation to her licensing workers, shows very poor judgment. But given the fact that Anderson has had a clean record for 22 years, is that lapse in judgment enough to support a conclusion that there is a risk to children in the future? That leads to the second issue for the Commissioner.

The other issue concerns the purpose of these hearings. Once a license has been immediately suspended, and a provider appeals, is the purpose of the hearing to determine whether or not there was reasonable cause to believe that the children were at risk when the license was suspended? Or, on the other hand, is the purpose of the hearing to determine whether or not the children will be at risk in the future if the facility is allowed to reopen? Is the hearing a backward-looking proceeding, to determine whether or not there was reasonable cause to suspend the license some weeks earlier, or is it a forward-looking proceeding to determine whether or not there is a risk in the future? This distinction can be highlighted by a hypothetical situation. Anderson’s license was suspended on September 9. Assume that Hazelwood had been picked up by the police on September 22, and that by the time of the hearing on October 11, his parole had been revoked and he had been committed to prison to serve a minimum of four years. Under that hypothetical, as of October 11, he is no longer a threat to the children. Should Anderson be allowed to reopen because Hazelwood has been locked away?

The Administrative Law Judge has decided that the legislature intended that the hearing should be a forward-looking hearing, asking whether or not there is an imminent risk of harm to the children in the future. An immediate suspension based upon a reasonable cause burden would seem to be compatible with the question of the risk of harm in the future. It then makes sense to look at Anderson’s entire history to determine whether her operation would pose a risk to children if it reopened. Having done this, the Administrative Law Judge cannot sustain the continued suspension. The question of the propriety of Anderson’s judgment in allowing Hazelwood to remain in her house can be considered in a Minn. Stat. § 245A.07, subd. 3 proceeding.

A.W.K.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 245A.07, subd. 2a(b).

^[3] Ex. 9.

^[4] Ex. 10.

^[5] Ex. 11.